

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

TIMOTHY BYERS,

Petitioner,

v.

//

CIVIL ACTION NO. 1:12CV40
(Judge Keeley)

TERRY O'BRIEN, Warden,
U.S.P. Hazelton,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On March 7, 2012, the pro se petitioner, Timothy Byers ("Byers"), filed a petition pursuant to 28 U.S.C. § 2241. The Court referred this matter to United States Magistrate Judge John S. Kaull for initial screening and a report and recommendation in accordance with LR PL P 2. On April 26, 2012, the respondent, Terry O'Brien ("O'Brien"), filed a Motion to Dismiss, Motion for Summary Judgment, and Response to Order to Show Cause. (Dkt. No. 14). Although the magistrate judge issued a Roseboro notice to the petitioner the next day, Byers filed no response.

On June 4, 2012, Magistrate Judge Kaull issued an Opinion and Report and Recommendation ("R&R"), in which he recommended that O'Brien's motion to dismiss be granted and the petitioner's § 2241 petition be denied and dismissed with prejudice. (Dkt. No. 18). The magistrate judge determined that Byers is not entitled to file the instant § 2241 petition because he failed to exhaust his administrative remedies, and because the Bureau of Prisons ("BOP")

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denied the petitioner good-time credits based on sufficient evidence.

The R&R also specifically warned Byers that his failure to object to the recommendation would result in the waiver of any appellate rights he might otherwise have on this issue. The parties did not file any objections.* Consequently, the Court **ADOPTS** the Report and Recommendation in its entirety (dkt. no. 18), **GRANTS** the motion to dismiss (dkt. no. 14), **DENIES** the § 2241 petition (dkt. no 1) and **ORDERS** that this case be **DISMISSED WITH PREJUDICE** and stricken from the Court's docket.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court directs the Clerk of Court to enter a separate judgment order and to transmit copies of both orders to counsel of record and to the pro se petitioner, certified mail, return receipt requested.

Dated: November 9, 2012.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE

* The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).